

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MOSES ERVINE,

Petitioner,

v.

JOSEPH T. SMITH,

Respondent.

ORDER

15 Civ. 9419 (ER)

RAMOS, D.J.

Moses Ervine, *pro se*, brought this petition for a writ of habeas corpus on November 24, 2015. Doc. 1. On February 16, 2016, Magistrate Judge Ronald L. Ellis stayed this action pending resolution of Ervine's motion to vacate pursuant to New York Crim Proc. Law § 440 before the New York Supreme Court, Bronx County. Doc. 12. On approximately March 31, 2017, Ervine's § 440 motion was denied. Doc. 19. On August 25, 2017, Ervine informed Judge Ellis that the Appellate Division, First Department had denied his motion seeking a certificate for leave to appeal and asked that the stay be continued so he could move the Appellate Division for a writ of error *coram nobis*. Doc. 20. Judge Ellis stayed the case pending resolution of that motion. *See id.* The Appellate Division denied Ervine's motion on May 31, 2018. Doc. 26. On March 26, 2019, Associate Judge Michael J. Garcia of the New York Court of Appeals denied Ervine's application for leave to appeal the Appellate Division's denial of the writ of error *coram nobis*. Doc. 32. Ervine having exhausted his state appeals, Magistrate Judge Stewart D. Aaron, to whom the case had been reassigned, set a briefing schedule for Ervine's petition on May 31, 2019. Doc. 33. Respondent submitted his opposition to Ervine's petition on September 30, 2019, and Ervine did not submit any reply.

On November 26, 2019, Judge Aaron submitted his report and recommendation to this Court, recommending that Ervine's petition be denied. Doc. 41. Ervine's objection to the report and recommendation was filed December 26, 2019. Doc. 42. To date, Respondent has not

submitted any response to Ervine's objection.

Accordingly, Respondent is directed to submit any response to Ervine's objections by March 22, 2022. Failure to do so will result in Ervine's objection being considered unopposed.

The Clerk of Court is respectfully directed to mail a copy of this order to Ervine at the following address:

Moses Ervine
12A2544
Shawangunk Correctional Facility
P.O. Box 700
Walkill, NY 12589

SO ORDERED.

Dated: February 22, 2022
New York, New York

A handwritten signature in blue ink, appearing to read 'Edgardo Ramos', is written over a horizontal line.

Edgardo Ramos, U.S.D.J.